

1 CARLA CHRISTOFFERSON (S.B. #161111)
cchristofferson@omm.com
2 ADAM G. LEVINE (S.B. #200522)
alevine@omm.com
3 KATE IDES (S.B. #274820)
kides@omm.com
4 DANIEL J. FARIA (S.B. #285158)
dfaria@omm.com
5 O'MELVENY & MYERS LLP
400 South Hope Street
6 Los Angeles, California 90071-2899
Telephone: (213) 430-6000
7 Facsimile: (213) 430-6407

8 RANDALL W. EDWARDS (S.B. #179053)
redwards@omm.com
9 O'MELVENY & MYERS LLP
Two Embarcadero Center, 28th Floor
10 San Francisco, CA 94111-3823
Telephone: (415) 984-8700
11 Facsimile: (415) 984-8701

12 Attorneys for Defendant
13 Trader Joe's Company

14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO DIVISION**

17 AMY GITSON *et al.*,
18
19 Plaintiffs,
20
21 v.
22 TRADER JOE'S COMPANY,
23
24 Defendant.

Case No. 13-CV-1333 VC

**JOINT STATUS UPDATE RE:
SCHEDULING OF MANDATORY
SETTLEMENT CONFERENCE AND
[PROPOSED] ORDER**

Judge: Hon. Joseph C. Spero

TAC Filed: April 3, 2014
Trial Date: March 23, 2015

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JOINT STATUS UPDATE RE:
SCHEDULING OF SETTLEMENT
CONFERENCE;
13-CV-1333 VC

1 Plaintiffs Amy Gitson and Deborah Ross and Defendant Trader Joe's Company
2 (collectively, the "Parties"), respectfully submit this joint status update regarding the scheduling
3 of the mandatory settlement conference in this matter.

4 On April 28, 2014, the Parties submitted a joint stipulation requesting that this Court
5 vacate the settlement conference scheduled for May 5, 2014. At that time, Trader Joe's had two
6 motions pending before Judge Chhabria—a motion to dismiss Plaintiffs' Third Amended
7 Complaint (Dkt. No. 82) and a motion to certify for interlocutory appeal (Dkt. No. 74). A central
8 issue raised by both motions was whether Plaintiffs have standing to assert claims as to
9 approximately 177 products they did not purchase. At the time the Parties submitted the joint
10 stipulation, they did not believe they were in the position to engage in meaningful settlement
11 discussions until this issue was resolved. On April 28, 2014, this Court vacated the May 5, 2014
12 settlement conference and continued it until a date approximately 60 days after the entry of an
13 order on Trader Joe's motion to dismiss, or 60 days after entry of an order on Trader Joe's motion
14 to certify for interlocutory appeal, whichever came later.

15 On August 8, 2014, Judge Chhabria entered a single order on both motions. (Dkt. No.
16 101.) The sum of this order is that Judge Chhabria denied the motion for interlocutory appeal as
17 to the issue of whether Plaintiffs have standing to assert claims as to approximately 177 products
18 they did not purchase. (*Id.* at 2-3.) As to Trader Joe's motion to dismiss, he stayed the entire case
19 on primary jurisdiction grounds until at least November 4, 2014 because the FDA "appears to be
20 considering the lawfulness of the use of the term 'evaporated cane juice' on food labels" (*id.* at 3-
21 4), and denied the remainder of Trader Joe's motion to dismiss without prejudice to re-filing once
22 the stay is lifted (*id.* at 4).

23 The Parties are in nearly the same situation as when they last requested a continuance of
24 the settlement conference scheduled in this matter. Notably, the operative pleadings in this matter
25 remain unsettled as Trader Joe's intends to refile its motion to dismiss the Third Amended
26 Complaint once the stay is lifted and a central issue raised by that motion will be whether the
27 Plaintiffs have standing to assert claims as to approximately 177 products they did not purchase,
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1 and Defendant believes the FDA may issue a guidance relevant to Plaintiffs' claims regarding the
 2 use of "evaporated cane juice," as recognized by Judge Chhabria in his August 8, 2014 order.
 3 (See Dkt. No. 101 at 3.) Given such, the Parties do not believe they are in the position to schedule
 4 a settlement conference at this time, and so the Parties propose that within 10 days of the
 5 November 4, 2014 Case Management Conference, where at Judge Chhabria will consider the
 6 propriety of maintaining the stay, they will jointly submit a status update wherein they will report
 7 on (1) the status of the stay; (2) if the stay is lifted, whether Trader Joe's intends to re-file its
 8 motion to dismiss the third amended complaint and, if so, by which date the Parties anticipate the
 9 motion will be resolved; and (3) if the stay is lifted and Trader Joe's refiles its motion to dismiss
 10 the Third Amended Complaint, the date by which the Parties will jointly contact Judge Spero's
 11 chambers to select a settlement conference date.

12 Dated: August 29, 2014

O'MELVENY & MYERS LLP

14 By: s/ Kate Ides

Kate Ides

15 Attorneys for Defendant
 16 Trader Joe's Company

17 Dated: August 29, 2014

CLIFFORD LAW OFFICES, P.C.

19 By: s/ Colin H. Dunn

Colin H. Dunn

20 Attorneys for Plaintiffs
 21 Amy Gitson and Deborah Ross

22 **[PROPOSED] ORDER**

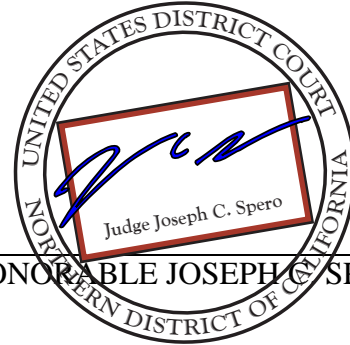
23 Having reviewed the Parties' joint status update regarding the scheduling of the
 24 mandatory settlement conference in this matter, it is hereby ordered that within 10 days of the
 25 November 4, 2014 Case Management Conference, where at Judge Chhabria will consider the
 26 propriety of maintaining the stay, the Parties will jointly submit a status update to this Court
 27 wherein they will report on (1) the status of the stay; (2) if the stay is lifted, whether Trader Joe's
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JOINT STATUS UPDATE RE:
 SCHEDULING OF SETTLEMENT
 CONFERENCE;
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1 intends to re-file its motion to dismiss the third amended complaint and, if so, by which date the
2 Parties anticipate the motion will be resolved; and (3) if the stay is lifted and Trader Joe's refiles
3 its motion to dismiss the Third Amended Complaint, the date by which the Parties will jointly
4 contact Judge Spero's chambers to select a settlement conference date.

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6 **IT IS SO ORDERED.**

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8 Dated: 09/02/14



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THE HONORABLE JOSEPH C. SPERO

JOINT STATUS UPDATE RE:
SCHEDULING OF SETTLEMENT
CONFERENCE;
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SIGNATURE ATTESTATION

The filing attorney attests that he has obtained concurrence regarding the filing of this document from each of the other signatories to this document.

Dated: August 29, 2014

CARLA CHRISTOFFERSON
RANDALL W. EDWARDS
O'MELVENY & MYERS LLP

By: s/ Kate Ides
Kate Ides
Attorneys for Defendant
Trader Joe's Company